

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9693 of 1993

WITH

SPECIAL CIVIL APPLICATION No 9694 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N A SHAH WORKING AS INDUSTRIES OFFICER, (TECHNICAL)
& ANR.

Versus

THE STATE OF GUJARAT & ORS

Appearance:

1. In Special Civil Application No.9693 of 1993

MR S TRIPATHY for Petitioners

MR SR DIVETIA for Respondent No. 1 & 2

MR AMIT M PANCHAL for Respondent No. 3 to 13

2. In Special Civil Application No.9694 of 1993

MR S TRIPATHY for Petitioner

MR SR DIVETIA for Respondent No. 1

None present for other Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/97

ORAL JUDGMENT

#. Both these Special Civil Applications have been filed by same petitioners. The first petition pertains to the dispute inter-se between the petitioners and private respondents regarding their seniority in the cadre of Industries Officer (Technical). The seniority dispute in the present case is in between the promotees and direct recruits. The second petition pertains to the claim of petitioners for promotion to the next higher post of Assistant Commissioner of Industries.

#. The facts of the case are not required to be taken in detail as in view of the subsequent events which have taken place during the pendency of these Special Civil Applications, I consider it to be appropriate to dispose of these matters with direction to respondent-State to decide the seniority issue in between the petitioners and private respondents after hearing both the parties.

#. The provisional seniority list which has been published of the cadre of Industries Officer (Technical) on 19th June 1991 has been finalized vide Notification dated 30th August 1993. The petitioners, promotees felt aggrieved of their position in the said seniority list and they approached this Court by way of Special Civil Application No.9693 of 1993. In the second Special Civil Application, the petitioners have made a grievance that they have already been recommended for promotion to the next higher post and as such the respondent-Government may be given direction to implement those recommendations and give them promotions.

#. Both these Special Civil Applications were decided by this Court on 28th July 1994. The seniority list dated 30th August 1993 was quashed and direction was given to prepare a fresh provisional seniority list inviting objections and then a time bound programme has been given for finalization of seniority. The second Special Civil Application was decided on the ground that the question of promotion can be taken into consideration only after the seniority list is finalized. That order appears to have been passed without hearing the learned counsel for private respondents and as such on speaking to minutes, that order has been recalled and the matter has been

posted for final hearing.

#. The private respondents filed Misc. Civil Application No.173 of 1997 and from the averments made therein which are not controverted by petitioners herein as well as the Government and the Department, it appears that a provisional seniority list came to be published on 4.1.97. The private respondents having apprehension that the respondent, State Government and the Department may act upon this provisional seniority list and may give promotions to the persons, the petitioners in these Special Civil Applications detrimental to their benefits, have filed Misc.Civil Application aforesaid. It also appears from the said Misc.Civil Application that the petitioners in these Special Civil Applications have been placed above the private respondents in the provisional seniority list. When the provisional seniority list has been published and the position as emerges therefrom is beneficial to the petitioners herein, as compared to what their position was there in the final seniority list dated 30th August 1993, then all the parties concerned should be heard before finalizing the provisional seniority list dated 4.1.97. Both the parties have manifold grievances against their positions which are respectively reflected in the earlier seniority list dated 30th August 1993. When the petitioners in these Special Civil Application were having grievance, and now from the provisional seniority list dated 4.1.97 it is reflected that the private respondents herein are aggrieved of their position, coupled with the fact that during the pendency of Special Civil Applications, the State Government and Department has again published a provisional seniority list, and that list has to be finalized, then in these circumstances in the interest of justice all the concerned parties have to be heard before finalizing the said list.

#. The learned counsel for private respondents, Shri Amit Panchal very fairly submitted that private respondents have no objection in case after hearing their objections and grievances the question of inter-se seniority of petitioners and private respondents is finally decided. What the learned counsel for private respondents contended was that till the issue of seniority inter-se between all the petitioners and private respondents in these Special Civil Applications is finally decided by the Department or State Government, as the case may be, the State Government and the Department may be restrained from acting upon this provisional seniority list. It has further been contended by learned counsel for private respondents that

in case ultimately the grievances of the private respondents against the provisional seniority list are not accepted, then the final seniority list which is ultimately published after hearing the parties may not be further given effect to for one month.

#. The learned counsel for the respondent-State has very vehemently opposed both these contentions made by learned counsel for private respondents.

#. I fail to see any justification in the opposition raised by learned counsel for State and Department. The petitioners in these petitions may not be aggrieved of the latest provisional seniority list as their position has been improved in this list, but provisional seniority list is provisional and ordinarily it should not have been given effect to and instead of keeping the matter pending for indefinite period, the provisional seniority list should have been finalized within a reasonable time. What reasonable time is required depends on the facts of each case and there cannot be any straight jacket limitation. However, this provisional seniority list has been published on 4.1.97 and despite of passing of more than seven months, the same has not been finalized. In case the provisional seniority list is given effect to, then certainly those persons who are not satisfied with their position therein may felt aggrieved and may represent their case as it is a case where without hearing such affected persons the list is to be operated. The provisional list is subject to correction also on the representation filed by affected persons who are aggrieved of the same and in such case, ordinarily it should not have been acted upon. Only where there is exceptional case and there is emergent necessity of giving promotion etc., there may be some semblance of justification in such case but not in all the cases. However, it is a fact, on which the parties are not on issue that for all these months the provisional seniority list dated 4.1.97 has not been given effect. It is not the case of respondent-State also that such an emergent situation in the Department has arisen that promotion has to be given to the next higher post of Assistant Commissioner of Industries forthwith, particularly when for these seven months this list has not been finalized by them. The respondent-State and Department stated that there is no emergent necessity for promotion to the next higher post.

#. So far as the second petition is concerned, where the inter-se seniority in the cadre of Industries Officer (Technical) has not been finalized of the petitioners and

the private respondents, I do not find any justification in the prayer for giving promotion to the petitioners to the next higher post. Normally, promotion should be given only after the seniority list of the cadre concerned is finalized.

##. The net result of the aforesaid discussion is that both these Special Civil Applications are disposed of in terms that the provisional seniority list dated 4.1.97 of the Industries Officer (Technical) shall be finalized within a period of three months from the date of receipt of certified copy of this order. While finalizing this provisional seniority list, the respondent-State Government is hereby directed to hear both, petitioners and private respondents. The final seniority list so prepared shall not be given effect to for further period of one month from the date of issuance of the same so that whosoever is felt aggrieved thereof may have reasonable time to approach and avail appropriate legal remedy available. Till the provisional seniority list is finalized, the respondent-State and the Department are restrained from giving any effect thereto. After finalization of the seniority list, and expiry of the period aforesaid, the respondent-State shall undertake the exercise of making promotions to the next higher posts if such posts are available. The Special Civil Applications as well as Rule therein stand disposed of in the aforesaid terms with no order as to costs.

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